HIGH COURT OF GUJARAT AT AHMEDABAD.

CRIMINAL APPEAL NO. 162 OF 1988.

DATE OF DECISION: 5.2.1995.

FOR APPROVAL AND SIGNATURE

THE HONOURABLE Mr.JUSTICE M. H. KADRI.

....J.....T.....T.....J.....T.....T.....J.....

1. Whether Reporters of Local Papers may be allowed to see the Judgment? NO.

2. To be referred to the Reporter or not ? NO.

3. Whether Their Lordships wish to see the fair copy of Judgment ? NO.

4. Whether this case involves a subst--antial question of law as to the interpretation of the Constitution of India, l950 or any order made

IIIIIIIIIII AAA

5. Whether it is to be circulated to the Civil Judges ? NO.

Mr.S.T.Mehta, APP, for the Appellant.

Respondent served.

CORAM: M. H. KADRI, J.

(5.2.1996)

ORAL JUDGMENT.

Appellant - State of Gujarat, has filed this appeal for enhancement of sentence imposed on the respondent accused by the learned Judicial Magistrate First Class, Chikhli, by his judgment and order dated 7.1.1988 passed in Criminal Case No.1447 of l987, wherein the respondent accused on accepting the plea of guilty was convicted for the offences punishable under Ss.7 and 16 of the Prevention of Food Adulteration Act, 1954 and was sentenced to imprisonment till rising of the court and to pay a fine of Rs.l,200/-, in default to undergo further SI for 3 months.

2. The prosecution case, briefly stated is that Food Inspector Mr.J.G.Mithawala, visited the shop of the respondent-accused, which is situated in Desai Street, Chikhli at l4.00 hours on 19.8.1987. In the said shop, the respondent was selling chocolates and biscuits. The Food Inspector had collected samples from the biscuits in the presence of panchas, and according to the provisions of the Prevention of Food Adulteration Rules, 1955, sent the samples to the Public Analyst, Food & Drugs Laboratory, Vadodara. The Drugs Laboratory, Vadodara, had submitted the report No.Q-3/815/87 dated 2.9.1987 to the effect that the biscuits sample was adulterated. On the basis of the said report, the Food Inspector filed a complaint in the Court of the learned JMFC, Chikhli, which was registered as Criminal Case No. 1447 of 1987.

3. Charge Exh.3 was framed against the respondent -accused, for the offences under Ss.7 and 16 of the Act. When the said charge was read over to the accused, he admitted to have committed the offence of adulteration. Thereafter, by filing purshis Ex.5, the respondent-accused stated that he is a small trader earning Rs.20 to Rs.25/per day and that he has to maintain 8 members of his family. He also stated that he is a young person recently married. That his financial condition was not good and therefore, he is not able to pay huge amount as fine. The accused therefore, prayed that looking to his condition and the fact that it was his first offence, mercy be shown to him. The learned Magistrate, on accepting the plea of guilty, convicted the accused for the offences under Ss. 7 and 16 of the Act, and sentenced him to suffer imprisonment till rising of the court and to pay a fine of Rs.1200/- as stated above.

4. From the record, it appears that alongwith the complaint, the Food Inspector had submitted the report of

the Public Analyst bearing No.Q-3/815/87 dated 2.9.1987, wherein it was stated that the sample biscuits of yellow and dark-pink in colour contained non-permitted colour. It was also reported that coal tar dyes were present, and therefore, the same did not conform to the standard provision laid down in Rule 29 of the Prevention of Food Adulteration Rules, 1955. According to Rule 29 of the Rules, use of coal tar is prohibited in biscuits, pastry, confectionery, etc. Even the accused had admitted to have committed the offence of selling adulterated biscuits.

5. S. 16 of the Act provides that when any person manufactures or sells adulterated article of food, he shall, in addition to the penalty to which he may be liable under the provisions of S.6 of the Act, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years, and with fine which shall not be less than one thousand rupees. In the present case, admittedly the accused was selling adulterated biscuits, which were to be consumed by small children which was hazardous to their health.

6. In the case of STATE OF GUJARAT vs. THAKORLAL KESHAVLAL RANA & ANR., 1991(1) GLR, 71, it has been observed :

> " What pains this Court most is the utter disregard shown by the trial Court in violating an unambiguous statutory provision regarding minimum punishment. Such act of defusing legislative mandate which aimed at protecting the public health from anti-social food adulteration activities is highly reprehensible and simply unthinkable. Anyway, in view of the fact that the Advocate of the accused has gained a point of plea bargaining in his favour, it must be held that the impugned order of sentence is illegal and unconstitutional and deserves to be quashed and set aside. "

In the said decision, the Court further held as under :

> " Thus, it must be realised that the recording of plead guilty is not an idle formality. Neither can it be permitted to be an escape nor a disposal device for either a Court or a prosecuting agency or an accused in place of full-fledged trial. Therefore, whenever an accused pleads guilty, the Court has got to seriously apply its mind to : (i) the gravity and seriousness of the alleged offence; (ii) whether and what the minimum punishment is

> prescribed for the alleged offence; (iii) whether such plea of guilty is honest and voluntary or is false and fraudulent obtained by way of temptation held out for the sentence less than the minimum prescribed; (iv) whether the accused has fully understood the true import of his pleading guilty, that is to say, not only that the accused has fully understood what are the facts alleged against him that constitutes the offence, but also the unavoidable consequences or the effect of pleading guilty, namely that in view of the minimum sentence prescribed under the law, despite his plea for mercy and sympathy while awarding sentence, he would be inevitably visited with the said minimum sentence prescribed under the law; (v) it is only after the trial court is satisfied about the above and that too, in the writing that it can accept the pleading guilty by the accused and pass order of sentence according to law. This has got to be done because the order of minimum sentence should not spring surprise to the accused, catching him unaware. "

7. In the present case, it appears that the learned Magistrate has clearly ignored the provision of S.16 of the Act, and has not taken into consideration the fact that the minimum sentence provided in the Statute for the offence under S.16 of the Act is imprisonment for six months and fine. Thus, this is a clear case of 'plea bargaining', which is not permitted, when the Statute provides for a minimum sentence. Various High Courts and the Apex Court have time and again laid down that if the Statute provides for minimum sentence, the court should not enter into 'plea bargaining' by imposing lighter sentence. The learned Magistrate had fallen into the trap of plea bargaining, by imposing the sentence of imprisonment till rising of the court, whereas the minimum sentence provided is imprisonment for 6 months. This approach of the learned Magistrate requires to be strongly deprecated.

8. In the result, this appeal for enhancement of sentence succeeds partly and is allowed to the said extent. The impugned judgment and order of conviction and sentence passed by the trial court is quashed and set aside. The case is remanded to the trial court for a fresh trial, with a direction to dispose of the same on merits according to law, as expeditiously as possible.

****